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April 28, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 93-25
Direct Broadcast Satellite
Public Service Obligations

Dear Mr. Caton:

Transmitted herewith, on behalf of United States Satellite Broadcasting Company, Inc., is an original and four copies of its Further Comments in the above referenced Docket.

Should there be any questions, please communicate with the undersigned.

Sincerely,

David A. Vaughan

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 25	)	
of the Cable Television Consumer	)	MM Docket No. 93-25
Protection and Competition	)	
Act of 1992	)	
	)	
Direct Broadcast Satellite	)	
Public Service Obligations	)	

FURTHER COMMENTS
OF
UNITED STATES SATELLITE BROADCASTING COMPANY, INC.

Dated:
April 28, 1997

Marvin Rosenberg
David A. Vaughan

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Counsel for United State Satellite Broadcasting Company, Inc.

SUMMARY

USSB has always recognized its responsibility to provide public interest programming and implemented that responsibility during the period that the constitutionality of section 25 was challenged. Nevertheless, DBS is still a nascent industry subject to significant technological and cost risks. DBS providers should therefore be provided maximum flexibility to meet their public service responsibilities. This will create greater opportunities for diversity and more timely responses to perceived needs for public service programming.

USSB agrees that no "public interest or other requirement" should be imposed upon DBS providers other than the minimum requirements of section 25, particularly for small DBS providers. Initial compliance should not be required earlier than two years after a final rule is adopted.

USSB supports providing different approaches for DBS providers to meet public service requirements including the proposal of the Satellite Broadcasting and Communications Association. An alternative to participating wholly or partially in the SBCA proposal should permit a DBS provider to meet its public service obligations as previously suggested by USSB and as refined in these comments.

USSB's experience with DBS confirms that particular channels need not be devoted exclusively to public service programming. This is particularly true for small (less than 50 channels) DBS providers. The percentage obligation for public service should be set at no more than 4% and should be based upon the "video channels offered to the public." DBS systems with less than 50 channels should be assigned a maximum

of 2 channels. The second channel would not be required until 75% of the channel capacity required for the second channel has become operational, i.e., 44 channels.

With respect to the requirement to impose sections 312(a)(7) and 315 on DBS providers, it would be an unreasonable obligation to require a DBS provider to provide access to all Federal candidates. Local programming is contrary to the nature of DBS service and can be better achieved by other types of program providers. DBS, however, is particularly well suited to assist candidates for national office and DBS providers should be encouraged to explore this type of political programming. Like broadcasters, DBS providers should be allowed broad latitude to exercise good faith judgement in political programming.

USSB continues to believe that "national educational programming suppliers" should not be defined narrowly and should include commercial as well as non-commercial entities. In this connection, there is no basis for distinguishing the broad editorial discretion of broadcasters under the First Amendment and that of DBS providers. With respect to educational and informational programming, the 1992 Cable Act does not provide for the equivalent of cable TV access channels.

Finally, USSB does not believe there is a need to define "reasonable prices, terms and conditions." Because of the nascent status of the DBS industry, DBS providers should have the flexibility of charging up to the maximum statutory rate for those programs meeting the definition of "national educational program suppliers."

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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	)	
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FURTHER COMMENTS
OF
UNITED STATES SATELLITE BROADCASTING COMPANY, INC.

United States Satellite Broadcasting Company, Inc. ("USSB") submits its further comments[1] in response to the Commission's January 31, 1997 notice requesting such comments ("1997 Notice"). The Commission's request was occasioned by the decision in Time Warner Entertainment Co., L.P. v. FCC, 93 F.3d 957 (D.C. Cir. 1996) (petition for rehearing denied), and the passage of time since the rulemaking was initiated. 1997 Notice.

Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") added a new Section 335 to the Communications Act of 1934 directing the Commission to conduct a rulemaking to impose public interest or

[1] USSB filed its initial comments in this proceeding on May 24, 1993 and its reply comments on July 14, 1993.

other video programming requirements on direct broadcast satellite ("DBS") service providers. The Commission initiated that rulemaking on March 2, 1993. Subsequently, the United States District Court for the District of Columbia held that section 25 was unconstitutional. In August 1996, the United States Court of Appeals for the District of Columbia Circuit, in Time Warner, supra, reversed the District Court. Because of the passage of time since comments were originally filed in this proceeding, the Commission has requested new and revised comments. 1997 Notice

USSB has always recognized its responsibility to provide public interest programming and has implemented that responsibility notwithstanding the status of the litigation over the constitutionality of section 25. For example, USSB has provided programming from Future Access to Commercial Television Audiences ("FACTA"), American Red Cross, American Cancer Society, American Lung Association, Freedom Forum, and Junior Achievement. USSB also carries the Reverend Schuller "Hour of Power" and has carried the Pope's Christmas Eve Message, the Pope's Christmas Day Message, and Easter Mass from the Vatican. During the national elections, USSB broadcast pieces of various lengths provided by Conus regarding candidate positions on various issues and provided additional time to President Clinton and Messrs. Dole and Perot.

BACKGROUND

In its May 24, 1993 comments, USSB discussed the responsibility for compliance under DBS public service obligations, the required channel capacity and the availability of channels, and suggested an implementation schedule for a final rule.

USSB also commented on the section 25(a) requirement that Sections 312(a)(7) and 315 be imposed on DBS providers. Since DBS is a national service, USSB concluded it would be an unreasonable obligation to require DBS providers to provide access to Federal candidates, other than national candidates, particularly because of the absence of spot beams on the DBS-1 satellite. Thus, USSB proposed that DBS providers be allowed discretion to limit the reasonable access requirement to candidates for national office. At a minimum, USSB noted the need to allow DBS providers the same latitude to exercise good faith judgement in political programming as is afforded to broadcasters.

USSB also pointed out that equal access should only apply to those channels designated by the DBS provider. USSB noted that such channels would likely be those which carry advertising supported programming. USSB urged that FCC cable policy be applied to DBS providers for Section 315 equal opportunity messages. USSB further supported applying the broadcast regulations with respect to the lowest unit charge and requiring that a DBS provider's political file need only be maintained at its headquarters.

Because of the considerable burden placed on a new service by the proposed public interest programming requirements and the political broadcast rules, USSB agreed with the Commission's suggestion that no additional public interest rules be imposed on DBS providers.

USSB noted that its DBS satellites at 101° W.L. did not and could not have spot beams. Moreover, USSB observed that spot beams for DBS service would not serve the

public interest, particularly as there were numerous other types of program services that are more suitable to serving specific locales.

In defining "national educational programming suppliers," USSB urged that a broad definition be applied, to include commercial as well as non-commercial entities. USSB objected to adopting a definition of "noncommercial educational and informational programming." Just as broadcasters are entrusted to exercise discretion to meet their public interest obligation, USSB believed that DBS providers should be so entrusted.

In view of the recognized difficulty and expense of establishing a viable DBS communications system, USSB urged the Commission to grant DBS providers the discretion to charge "national educational suppliers" up to the maximum statutory rate permitted, 50 percent of direct costs.

In its July 14, 1993 reply comments, USSB re-emphasized the need to balance the needs of the nascent DBS service against the goals of section 25. In addition, USSB noted the overriding intent of the 1992 Cable Act to protect consumers from unreasonable prices by promoting the growth of competitors for cable TV MSOs. USSB also discussed extensively the principle of localism and concluded that DBS could not be currently offered on a local basis in an efficient, effective and economic manner. Importantly, the 1992 Cable Act does not mandate the imposition of local video programming requirements on DBS providers. USSB also discussed NATOA's[2] comments, including the suggestion that DBS operators be required to provide 5

[2] National Association of Telecommunications Officers and Advisors.

percent of their gross profits to local programmers. USSB demonstrated that NATOA's suggestions are beyond the scope of the 1992 Cable Act and the 1993 notice of proposed rulemaking.

With respect to non-commercial educational and informational programming, USSB's reply comments pointed out that the 1992 Cable Act does not prevent DBS providers from selecting programmers or the timing or placement of programming. In particular, USSB noted that there is no basis for distinguishing the broad editorial discretion of broadcasters under the First Amendment and that of DBS operators. Thus, even under the Fairness Doctrine, broadcasters retain a substantial amount of editorial control, and no particular private individual or institution has an indefeasible right to access. CBS v. Democratic National Committee, 412 U.S. 94, 110-113 (1973).

For this reason, USSB opposed comments promoting the allocation of channel space among non-commercial programmers pursuant to a lottery or a first-come, first-served procedure or a requirement that Section 335(b) programming be placed on a reserved channel.

Finally, USSB's 1993 reply comments agreed with other commenters who stated that a definition of "noncommercial educational and informational programming" is unnecessary. USSB also explained why the proposed definition of "HITN" limiting the term to formal educational programming from accredited schools was too narrow in defining "educational," ignoring the "informational" aspect of the term.

The 1997 NOTICE

The 1997 Notice inter alia seeks comments on the following: how to apply the requirements of sections 312(a)(7) and 315 of the Communications Act to DBS providers and whether "public interest or other requirements" should be imposed on DBS providers other than the minimum requirements of section 25(a) of the 1992 Cable Act. In addition, comments were requested whether additional public interest service requirements should be required in light of the rapid deployment of DBS service and technological advances.

Comments were also requested on how to apply the separate requirements of section 25(b) of the 1992 Cable Act, particularly the 4 percent to 7 percent reservation of channel capacity for noncommercial programming. In this connection, the Commission asked for assistance in defining the terms "noncommercial" programming and "reasonable prices, terms and conditions." The Commission also asked what entities other than "national educational programming suppliers" must be afforded access to channel capacity under section 25(b).

USSB'S FURTHER COMMENTS

The Satellite Broadcasting and Communications Association of America ("SBCA") intends to submit comments in response to the 1997 Notice proposing that the DBS industry create a non-profit 501(C)(3) organization to administer and coordinate the fulfilling of DBS public service obligations. USSB supports the proposal of the SBCA

as one of the alternative approaches for a DBS provider to meet its public service obligations.

An acceptable alternative to participating wholly or partially in the SBCA proposal should permit a DBS provider to meet its public service obligations as set forth in USSB's May 24, 1993 comments and its July 14, 1993 reply comments as modified herein. There are several reasons for USSB's position. First, as noted above USSB has a rich tradition of initiating public service programming. Its major shareholder, Hubbard Broadcasting Inc., has long been recognized as a broadcaster operating in the public interest. Thus, USSB has undertaken public service broadcasting without a regulatory requirement. Second, USSB believes that alternative approaches to providing public service programming provides opportunities for greater diversity and more timely responses to perceived needs for public service programming. For example, smaller DBS systems could provide personal computer Internet-like access to meet educational needs.

Since commencing operation in 1994, USSB's experience confirms its earlier view that particular channels need not be devoted exclusively to meeting a DBS provider's public service obligation. Public service required programming may all occur on the same channel or may be distributed over several channels. This is particularly true for small DBS operators (those with less than 50 channels). USSB also continues to believe that the percentage obligation for public service should be set at the minimum (4%), particularly for small DBS providers. See Conference Report, 86.

USSB believes that the definition of satellite capacity to be used to determine the 4% requirement should be the "video channels offered to the public". The following

channels should not be deemed to be "video channels offered to the public": system channels containing instructions or which are necessary to operate or administer DBS service; barker channels; channels containing static video; audio-only channels; channel guides; and data or business-only channels.

In applying the 4% requirement to a DBS provider's total available "video channels offered to the public," USSB endorses a "step" system to be calculated annually as suggested by the SBCA. In particular, USSB urges that DBS systems with less than 50 channels be assigned a maximum of 2 channels. The second channel for such a system would not become operational until 75% of the channel capacity required for the second channel has become operational, i.e., 44 channels. This will minimize market disruptions for such small DBS providers and will encourage technological innovation. In addition, USSB strongly urges that the 4% calculation for such small DBS systems be calculated against the total operational capacities encompassed by all orbital locations (East and/or West) rather than at each single, specific location.

USSB suggests that initial compliance not be required to commence earlier than two years after a final rule is adopted. This period is a reasonable period to conclude the steps necessary to meet the public service programming requirements: program procurement and development, scheduling, promotion, etc. This period to meet compliance is particularly important to small DBS providers.

With respect to the requirement to impose sections 312d(a)(7) and 315 on DBS providers, USSB considers it an unreasonable obligation to require a DBS provider to provide access to every Federal candidate. Providing local programming is contrary to

the nature of DBS service and can be better achieved by other types of program providers. DBS providers on the other hand are well situated to assist candidates for national office. USSB therefore continues to support affording DBS providers the discretion to limit the reasonable access requirement to candidates for national office. Importantly, USSB urges that DBS providers be allowed the same latitude to exercise the same good faith judgement allowed broadcasters in political programming. There is no reasonable basis for treating DBS providers differently than broadcasters in this regard.

As to equal access, USSB supports application only to those channels designated by the DBS provider. USSB continues to believe that most DBS providers would designate channels that carry advertising supported programming. Thus, USSB advocates that, as in cable, equal opportunity does not require carriage of an opponent's response on the same channel as the initial candidate's spot appeared. As to the lowest unit charge, USSB believes that the broadcast regulations should apply.

USSB continues to believe that "national educational programming suppliers" should not be defined narrowly and urges that the term include commercial as well as non-commercial entities. Such "commercial" providers, however, are national "information" providers to which the maximum statutory rate, 50 percent of direct costs, does not apply.

With respect to non-commercial educational and informational programming, USSB wishes to re-emphasize that the 1992 Cable Act does not transform channel space designated for such programming into the equivalent of cable TV access channels.

Under the Act, DBS operators are only required to "reserve a portion of [their] channel capacity" for such programming and prevents them from exerting editorial control over such programming.

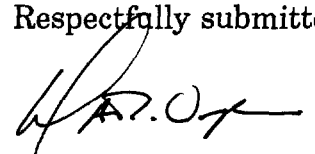
There is no basis, moreover, for distinguishing the broad editorial discretion of broadcasters under the First Amendment and that of DBS providers. Under the Act, DBS providers are entrusted to meet their public interest obligation in this regard just as broadcasters are entrusted. Even under the Fairness Doctrine, broadcasters had substantial control and no particular private individual or institution has an indefeasible right to access. Thus, DBS operators remain free to select programmers, the timing and placement of such programming but may not exert editorial control over such programming. The rare DBS provider who does not recognize its responsibilities will undoubtedly be dealt with by the Commission using complaint procedures, just as broadcasters are.

In this connection, USSB continues to believe that there is no reason to define "noncommercial." Flexibility should be encouraged and the rare DBS operator which may abuse that flexibility can be dealt with by the Commission.

USSB also does not believe there is a need to define "reasonable prices, terms and conditions." In view of the still nascent status of the DBS industry, USSB supports allowing DBS providers the flexibility to charge up to the maximum statutory rate, 50 percent of direct costs for those programs meeting the definition of "national educational program suppliers."

USSB continues to believe that no "public interest or other requirement" should be imposed upon DBS providers other than the minimum requirements of section 25(a), particularly for small DBS providers. The rapid deployment of DBS in the last few years does not alter this conclusion. DBS is still a nascent industry which has incurred significant technological and cost risks. Increasing the burden of public interest requirements at this point would unduly handicap DBS in attempting to recoup its investments and to confront the challenge of cable competition. Indeed, the minimum standards imposed upon DBS providers is more stringent than those imposed upon cable: cable is not obliged to provide a 50% cost subsidy to certain types of public service programmers as is DBS. In these circumstances, USSB urges the Commission to provide maximum flexibility to DBS providers under its initial rule. The Commission can revisit any issue where practical experience suggests a need for modification.

Respectfully submitted,



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